

Depositions v. Trials:

Where's the Beef?

This month, contributions from Austin (William Alberts, Kelli Norris); Beaumont (Hollis Horton); Dallas (Judge Frank Andrews, James McCarthy); Houston (Roger Berger, Charles Erickson, Audrey Moore); McAllen (Judge Juan Partida, David Jones); and Victoria (Clarence Stevenson).

Number One Easy Street

From **Hollis Horton** of Beaumont (Orgain, Bell, etc.), this excerpt from the plaintiff's deposition in a workers' compensation case — which was settled, "some-time after the deposition, for an amount which reportedly allowed the plaintiff to maintain his standard of living."

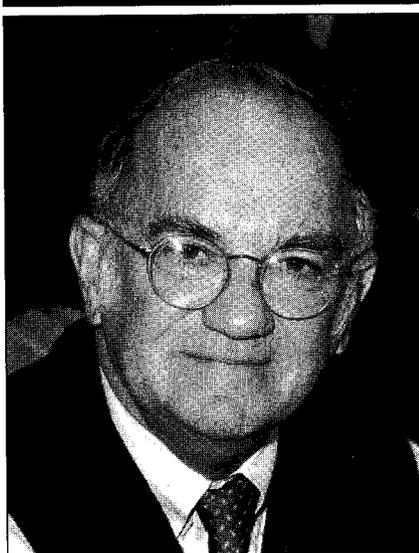
- Q. What's your address [in Lumberton]?
 A. My mailing address?
 Q. Well, tell me where your residence address is. If it has a house number, tell me that.
 A. Well, we just named our street last summer; went before city council and named it "Easy Street." It didn't have a name on it. I've never been on easy street.... I'm the only person that lives there — I'm going to put me a number out there. *Number One Easy Street*, as a matter of fact ... I saw Easy Street down here one day in Beaumont. I said I ain't never been on easy street, but I am now.
 Q. You got to pick the name, yourself?
 A. Drew up a petition. Everybody that lived on it signed it, which was only me. I went before the city council. But you do have to drive easy on it because it's rough.

Did He/She Really Say That?

From **Aubrey L. Moore** of Houston (Aubrey is a certified legal assistant), this marvelous (!) excerpt from a deposition taken by **Robert C. McCabe** (of Houston) in a personal injury case. (Both Aubrey and Robert are with Tekell, Book, etc.)

- Q. Were you married to anyone before Mr. Brown?
 A. No.
 Q. The three children that you have, are those all as a result of your marriage to Mr. Brown?
 A. No.
 Q. Can you tell me how those children

By Jerry Buchmeyer



- came about?
 A. By having intercourse.
 Q. Well, I know that. But who's the father of those children?

From **Judge Juan R. Partida** of McAllen (275th District Court), this excerpt from one of his recent civil trials:

- Q. Well, did you help finance these tennis courts?
 A. Yes, I loaned him \$13,000 for — between 12 and 13, I think.
 Q. Why did he need \$13,000?
 A. Well, I don't — he asked for it. I gave it to him.
 Q. Are you in the habit of doing that?
 A. Unfortunately, yes.
 Q. I'll catch you when we finish right outside.
 A. It's all gone.

The Genderful Bunny

From **Kelli A. Norris** of Austin (Naman, Howell, etc.), this deposition excerpt from a "multi-party personal injury lawsuit":

- Q. Who is the contact person [at the company]? Do they have, like, a scheduler or a supervisor or somebody that you call?
 A. Yes.
 Q. Who is that?
 A. First name Bunny.

- Q. Bunny?
 A. There could only be one.
 Q. I'm not going to get punched if I call and ask for Bunny, right?
 A. No.
 Def. Attny: Is Bunny a male, or female?
 The reason I'm asking, I had an uncle and we called him Uncle Bunny, so —
 Witness: She's a male — she's a female. An Uncle Bunny must — she must be a male.

Did I Really Ask That?

From **David H. Jones** of McAllen (Jarvis & Kittleman), this excerpt from the deposition of his client, "an 18-year-old male who, when he was approximately 16 years old, was wrongly committed by a local mental hospital":

- Q. During this entire period, did — I take it from your testimony, today, it appears that Dr. Smith did not tell you that you would commit suicide if you were released; is that correct?
 A. Correct.
 Q. And, in fact, you haven't done that; is that correct?
 A. Correct.

From **William H. Alberts** of Austin (McLeroy & Alberts), this excerpt from "a hearing on a motion to modify in a family law case." The questions are by the "opposing attorney who had flown in from out of town to represent his sister in this matter":

- Q. When was the last time you had a marijuana cigarette?
 A. One of the last times that keeps popping up in my mind was the last time I smoked with you.
 Q. I beg your pardon?
 A. I said one of the last times that I ever recall really smoking marijuana was with you when you come back from the Army.
 Q. You don't remember smoking since 1979?

Back to the Basics

From **Charles R. Erickson** of Houston (Triton Tool & Supply), these deposition excerpts from a "typical oilfield personal injury case with numerous defendants,

cross-plaintiffs and, of course, attorneys”:

Q. Are you married?

A. Yes.

Q. What is the name of your spouse?

A. Susan.

Q. *How long have you been married?*

A. *Too long.*

Q. Well, I move that be stricken.

Def. Counsel Two: I concur.

Def. Counsel Three: Well, it goes to establish his credibility.

Def. Counsel Four: Right, leave it in.

Def. Counsel One: Leave it in.

Q. How long have you been married?

A. Twenty — I believe it's 22 years.

[Later]

Q. What happened to James Smith? Is he dead?

A. He was killed in a domestic dispute. His wife shot him.

Def. Counsel Two: He was married too long, too.

Def. Counsel Four: She heard the comment, also.

Def. Counsel One: She read his deposition.

Def. Counsel Three: He was apparently married one day too long.¹

Be Careful With Experts

From **Judge Frank Andrews** of Dallas (116th District Court), this excerpt from the testimony of the obstetrician/gynecologist in a malpractice-death case.

Q. All right. Let's go back to 4:15 [on the patient's chart]. It says "Dr. Prince" here. Right?

A. Yes, sir.

Q. Then 4:25, "Back to procedure due to bleeding and passing of clots." Did I read that right?

A. Yes, sir.

Q. 4:30, Dr. Prince began *resurrection* procedure.

A. No, sir.

Q. Resurrection procedure.

A. *I'm not that good. I can't resurrect anybody.*

From **Judge Clarence N. Stevenson** of Victoria (24th District Court), this excerpt from the testimony of an expert witness (a neurosurgeon) in the trial of a slip and fall case. The questions are by **Bill Seerden** of Victoria (Cullen, Carsner & Seerden).

Q. Doctor, I guess I want to ask you about both then, both the original condition [of her back] and the surgery.

A. Her back is not a virgin. It wasn't a virgin from the moment that the disc herniated. If the surgery were performed by angels ... there will be some scar formation. The scar is not formed by the surgery, it's formed by a patient that is

alive after the surgery. If you don't want scars forming after surgery, you must kill the patient. *I try to avoid that, okay.*

Q. *We were glad you were successful.*

From **Roger A. Berger** of Houston (Glover, Anderson, etc.), this excerpt from his deposition of the plaintiff's expert witness — who was from Omaha, NE — in a dental malpractice case.

Q. Do you know how [the plaintiff's attorney] first learned that you were a person who was available to give testimony in cases against dentists?

A. Probably through the *Texas Lawyer*. I advertised for about four months.

Q. You advertised in the *Texas Lawyer*? Do you know what sort of publication that is?

A. Well, it's a defense and plaintiff publication.

Q. Well, it's a lawyer publication, right?

A. Well, that's correct. *It's more like — almost like the National Enquirer, I guess, of attorneys.*

Where's the Beef?

From **James D. McCarthy** of Dallas (Hughes & Luce), this trial excerpt — sent to him by **Emily McKillip** of Philadelphia, PA (assistant U.S. attorney) — which shows what may happen "when you try to get too cute" in your closing argument: [Mr. Pugh's closing]

And I once again ask you, if the defense counsel really has a point to make in this accident — if defense counsel has a point to make — *where's the evidence? Like the old thing, Where's the Beef?* You open the hamburger, little old lady looks in there, says, "where's the beef?" There ain't no beef. And defense counsel, there ain't no beef. That's been shown to you in this courtroom. *You open that defense counsel's buns, if you did so — I didn't mean that literally.*

Mr. Ingram: Thank you.

Mr. Pugh: — there would be no meat, I would hope.

1. Also from the **Charles Erickson** submission:

Q. How old is your son, Jeff?

A. Jeff is 17.

Q. Has Jeff ever worked at your company or for any of your businesses?

A. *He never worked anywhere, including home.*

Jerry Buchmeyer is a federal district judge for the Northern District of Texas. If you would like to submit a contribution to this column, write him at 15-E-6 Earle Cabell Federal Building, 1100 Commerce St., Dallas 75242.

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